VINCENT CHENG KIM CHUAN

v.

THE MINISTER FOR HOME AFFAIRS & ORS.

HIGH COURT, SINGAPORE
FA CHUA J
[ORIGINATING MOTION NO. 66 OF 1989]
28 NOVEMBER 1991

CIVIL PROCEDURE: *Notice of taxation - Getting-up relating to the motion - Whether Senior Assistant Registrar considered adequately submissions of the applicant.*

This is an application to a Judge to review the order of the Senior Assistant Registrar (SAR), on review dated 23 May 1991, allowing the sum of $65,000 for getting-up (item 81 and 82 of the bill of costs) and $4,000 for getting-up (item 63 of the bill of costs). Item 81 and 82 were drawn at $100,000 and were allowed at $80,000 and item 63 was drawn at $6000 and allowed at $4,500 at taxation.

On 16 June 1989, the President, pursuant to s. 8(2) of the Internal Security Act, directed that the period of the applicant's detention be extended. On 21 June 1989, the applicant filed this originating motion applying for a writ of *habeas corpus.*

The issue in this application is that, on the aftermath of hearing which occupied 5 days, the High Court dismissed the motion with costs. Notice of Taxation was duly drawn up, submitted and taxed. Only 3 items remained for review, namely items 81 and 82, getting up relating to the motion and item 63 getting-up arising from an application by the applicant for leave to cross-examine the Government's departments on their affidavits.

Held:
[1] The SAR had reasonably sufficient material before him in arriving at his decision. It is a matter purely within the SAR's discretion and I should not interfere with his decision.

Case referred to:
Chng Suan Tze v. Minister of Home Affairs & Ors. [1989] 1 MLJ 69 ***(cons)***

Legislation referred to:
Internal Security Act [Sing], ss. 8(1)(a), 8(2)

Other source referred to:
Halsbury's Laws of England, 4th Edn., paras. 757-850

For the applicant - Patrick Seong
For the respondents - Soh Tze Bian

JUDGMENT

FA Chua J:

This is an application to a Judge to review the order of the Senior Assistant Registrar (SAR), on review, dated 23 May 1991, allowing the sum of $65,000 for getting-up, (items 81 and 82 of the bill of costs) and $4,000 for getting-up (item 63 of the bill of costs). Items 81 and 82 were drawn at $100,000, and were allowed at $80,000, and item 63 was drawn at $6,000 and allowed at $4,500 on taxation.

The factual background leading to the taxation of party and party costs pursuant to the order of Court dated 31 January 1990, is briefly as follows:

Vincent Cheng (the applicant) was arrested under the Internal Security Act (ISA) on 21 May 1987. On 19 June 1987, the applicant was served with an order of detention under s. 8(1)(a) of the lSA for a period of two years with effect from 20 June 1987, on the grounds that he had "acted in a manner prejudicial to the security of Singapore by being the central figure in the Marxist conspiracy masterminded by Tan Wah Piow, to subvert the existing social and political system in Singapore, using communist united front tactics with a view to establish a Marxist state".

In January 1989, the Government introduced two measures in Parliament:

(a) The Constitution of the Republic of Singapore (Amendment) Act 1989 (No 1 of 1989) which was passed by Parliament and came into operation on 27 January 1989;

(b) The Internal Security (Amendment) Act 1989 (No 2 of 1989) which was passed by Parliament and came into operation on 30 January 1989.

Act No 1 of 1989 amended Article 149 of the Constitution to provide that any question in respect of proceedings under the ISA be determined in accordance with the provisions of any "law as may be enacted by Parliament for this purpose" and that "nothing in Article 93 shall invalidate any law enacted pursuant to this clause". Act No 2 of 1989 added four new provisions to the lSA which have the effect of:

(a) pegging the law governing judicial review of any decision made or done by either the President or the Minister under the ISA to that subsisting as at 13 July 1971, (s. 88(2));

(b) ousting judicial review of any act done or decision made by either the President or the Minister under the provisions of the ISA, except questions relating to compliance with any procedural requirement of the Act (s. 8B(2);

(c) stopping all appeals to the Privy Council in all ISA cases (s. 8(C));and

(d) making the new provisions applicable retrospectively, that is in respect of proceedings instituted before or after the commencement of the Internal Security (Amendment) Act 1989.

On l6 June 1989, the President, pursuant to s. 8(2) of the ISA, directed that the period of the applicant's detention be extended until 20 June l990.

On 21 June 1989, the applicant filed this originating motion applying for a writ of *habeas corpus.* The applicant claimed that the Minister's decision to detain him under s. 8 of the ISA and the order of the President of 16 June 1989, extending his detention under s. 8(2) of the ISA were illegal, irrational and unconstitutional. In support of the motion, the applicant claimed that he did not act in any manner which was prejudicial to the security of Singapore and that the allegations of fact made against him were not supported by any evidence and were untrue. He also said that his admissions (which he later retracted) were made under duress and that force was used against him.

Counsel for the applicant had argued that in deciding the application, the High Court should apply the objective test, developed in the Court of Appeal decision in *Chng Suan Tze v. Minister for Home Affairs & Ors.* [1989] 1 MLJ 69 to determine the validity of the detention orders made against him.

In respect of the recent amendments to the ISA and the Constitution, Counsel for the applicant had argued that:

(1) on their true construction, the amendments did not preclude judicial review of decisions and acts purportedly taken or made under the ISA which were in law nullities, and which were not taken or made "in pursuance" of the power conferred upon the authority by the ISA;

(2) Article 149 (as amended) did not authorise legislation of that character;

(3) alternatively, that if Article 149 (as amended) did authorise legislation of that character, then the amendments to Article 149 were themselves not authorised by the Constitution;

(4) if arguments (1) or (2) or (3) were correct, then the court could apply the objective test as enunciated by the Court of Appeal in *Chng Suan Tze* and judicially review the decision taken in this case and find that:

(a) irrelevant considerations were taken into account; and

(b) the decisions were irrational in the sense that there was "no evidence" at all

(5) if the law in *Chng Suan Tze* were applied, the respondents failed to rebut the challenge on the evidence; and

(6) if the cout rejected arguments (1) to (5), the court could still review the detention to see if it infringed the applicant's rights of religion under Article 15 of the Constitution and that the respondents failed to rebut the applicant's challenge on the evidence.

After a hearing which occupied 5 days, the High Court dismissed the motion with costs. Notice of taxation was duly drawn up, submitted and taxed. Only 3 items remained for review, namely items 81 and 82, getting-up relating to the motion and item 63 getting-up arising from an application by the applicant for leave to cross-examine the government's deponents on their affidavits.

Items 81 and 82

The complaint of the applicant is that the SAR did not consider or consider adequately the submissions of the applicant in his grounds of decision and instead adopted entirely the minute listing of issues by the respondents.

Counsel for the applicant submits that the SAR erred in his over reliance on the fact that there were considerable number of authories cited to the court but failed to take into or give any adequate consideration to the following submissions of the applicant:

(a) The same legislation and authorities were used in Teo Soh Lung (CA 81/88) and this motion. The respondents in their letter of 25 August 1989, to the Registrar and copied to the applicant, suggested, with a view to save costs, that the same copies of the five volumes of the bundle of authorities and Legislation which they had submitted in relation to Teo Soh Lung, be also used for the hearing of this motion.

Counsel argues that the respondents' claim of "looking up of various authorities" in the bill of costs must be given a nominal value.

(b) The respondents used the same arguments - substantially word for word - on four occasions:

(i) Before Lai J in Teo Soh Lung;

(ii) Before the court of appeal in Teo Soh Lung;

(iii) Before Chua J in Teo Soh Lung;

(v) Before Lai J in this motion.

Counsel says that there was nothing new, novel or radical in the applicant's or respondents' approach in this motion.

ln Teo Soh Lung, 4 days hearing, there were numerous issues, almost 20 years of case law was overturned and $30,000 was awarded for getting-up. In the present case, 5 days hearing, which revolves on one major case *(Anisminic)* and the principles thereunder, $80,000 was awarded for getting-up. Counsel submits that a fair figure for getting-up in this case should not exceed $18,000.

Item 63

Counsel for the applicant submits that the SAR erred in agreeing with Counsel for the respondents that extra research and getting-up were done on five issues which were raised or considered at the hearing of the application (p. 13 G/D). Counsel contends that there was only one issue raised in the application: whether an applicant in a *habeas corpus* proceeding was entitled to cross-examine a deponent. Counsel says that the application was heard in an ordinary summons day and the award of $4,000 costs cannot be justified.

Decision on Items 81 and 82

I am unable to accept the submission of Counsel for the applicant that the SAR did not consider or consider adequately the submissions of the applicant. The SAR clearly did.

The grounds of decision clearly shows that the SAR has reasonably sufficient material before him; he has not taken into account matters which he should not have considered; he has taken into account all relevant matters that he should have considered; he has given reasons that are correct, he has acted upon correct principles and adopted the correct approach.

This matter is purely one for his discretion and I should not interfere with his decision. (See 37 *Halsbury's Laws of England*, 4th Edn., paras. 757-850).

I am of the view that $65,000 for getting-up is fair and reasonable.

Decision on Item 63

The SAR is not wrong in agreeing with Counsel for the respondents that extensive research and getting-up had to be done on the five issues which were raised or considered at the hearing of the application.

It was not a simple application, as Counsel for the applicant contends. There were arguments which took 1 hour before Lai J on an ordinary summons day and there were further arguments before Lai J on another day.

The SAR has had reasonably sufficient material before him before arriving at his decision. It is matter purely within the SAR's discretion and I should not interfere with his decision. I am of the view that $4,000 for getting-up is fair and reasonable.

Also found at [1992] 2 CLJ 945